

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
ADVANCED ANALYTICS, INC.,

Plaintiff,

-v-

CITIGROUP GLOBAL MARKETS, INC., et al.,

Defendants.

CIVIL ACTION NO.: 04 Civ. 3531 (LTS) (SLC)

ORDER TO SHOW CAUSE

SARAH L. CAVE, United States Magistrate Judge.

On March 26, 2014, the Honorable Henry B. Pitman ordered that Plaintiff Advanced Analytics, Inc. (“AAI”) and its counsel at that time (Todd S. Collins, Esq., Berger & Montague, P.C. (“Collins”)), “shall reimburse Defendants” Citigroup Global Markets, Inc. and Yield Book, Inc. (“Defendants”) for their expenses “incurred as a result of AAI’s failure to comply” with the Court’s prior Scheduling Order and Fed. R. Civ. P. 26(a)(2). (ECF No. 235 at 7 (the “2014 Order”)). AAI’s objections to the 2014 Order were overruled. See Advanced Analytics, Inc. v. Citigroup Glob. Mkts., Inc., 301 F.R.D. 31, 44 (S.D.N.Y. 2014), objections overruled, 301 F.R.D. 47 (S.D.N.Y. 2014).

In accordance with the 2014 Order, on December 5, 2019, as amended on January 8, 2020, this Court issued an order granting in part the application of Defendants for an award of \$57,270.91 in attorneys’ fees pursuant to Federal Rules of Civil Procedure 16(f)(2) and 37(c)(1). (ECF Nos. 389; 410 (the “Fee Order”)). The Court subsequently stayed the deadline for AAI and Collins to comply with the Fee Order pending resolution of AAI’s anticipated motion for reconsideration. (ECF No. 409). On June 9, 2020, the Court denied AAI’s motion for

reconsideration of the Fee Order, and directed payment by AAI and Collins within 60 days, i.e., August 9, 2020. (ECF No. 438).

On July 15, 2020, pending resolution of AAI's objections to the Fee Order, the Honorable Laura Taylor Swain stayed the deadline for AAI and Collins to comply with the Fee Order until 60 days following her ruling on AAI's objections. (ECF No. 447). On September 30, 2021, Judge Swain issued a memorandum order, which, among other things, overruled AAI's objections to the Fee Order. (ECF No. 461 (the "2021 Order")). Thus, the deadline for AAI and Collins to pay the fees awarded by the Fee Order was November 29, 2021, 60 days following September 30, 2021. (See ECF No. 447).

As of December 14, 2021, AAI and its former counsel had not paid the fees awarded by the Fee Order. (ECF No. 469). On February 2, 2022, the Court held a conference with the parties, during which AAI's current counsel admitted that AAI had not paid the fees ordered by the Fee Order, and Defendants' counsel confirmed that Collins has also not paid. (See ECF No. 471). Accordingly, it would appear that AAI and Collins are in contempt of the Fee Order.

The Court has the inherent power to hold a party in civil contempt for noncompliance with a court order "when (1) the order the party allegedly failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the party has not diligently attempted in a reasonable manner to comply." New York State Nat'l Org for Women v. Terry, 886 F.2d 1339, 1351 (2d Cir. 1989).

Accordingly,

IT IS HEREBY ORDERED that AAI and Collins **SHOW CAUSE** by **MARCH 2, 2022** why they should not be held in contempt for failure to comply with this Court's Fee Order requiring payment of Defendants' attorneys' fees in the amount of \$57,270.91.

IT IS FURTHER ORDERED that Defendants shall respond to the submissions of AAI and Collins by **APRIL 1, 2022**.

IT IS FURTHER ORDERED that the parties' and Collins' submissions shall comply with Magistrate Judge Cave's Individual Practices § III.B.

IT IS FURTHER ORDERED that NO FURTHER BRIEFING of this Order to Show Cause other than as set forth herein will be permitted absent prior order of this Court.

IT IS FURTHER ORDERED that Defendants are directed to serve a copy of the 2014 Order, the Fee Order, the 2021 Order, and this Order to Show Cause on Collins and file proof of service on the docket by **February 9, 2022**.

IT IS FURTHER ORDERED that Defendants shall order a transcript of the conference held today, February 2, 2022.

SO ORDERED.

Dated: New York, New York
February 2, 2022


SARAH L. CAVE
United States Magistrate Judge